

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JORGE JOYA,

08 CV 5328 (PKL)

Plaintiff,

VERIFIED ANSWER

-against-

VERIZON NEW YORK, INC., and  
MASTEC NORTH AMERICA, INC.,

Defendants.

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Defendant **MASTEC NORTH AMERICA, INC.**, by its attorneys JONES HIRSCH CONNORS & BULL P.C., as and for its Answer to plaintiff's Verified Complaint, alleges as follows upon information and belief:

AS TO THE FIRST CAUSE OF ACTION

FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "1".

SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "2".

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "3".

FOURTH: Denies the allegations contained in the paragraph of the Verified Complaint designated "4", except admits that answering defendant is a Florida corporation licensed to do business in the State of New York.

FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "5".

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "6", except begs leave to refer all questions of law to the Court and all questions of fact to the trier thereof.

SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "7", except begs leave to refer all questions of law to the Court and all questions of fact to the trier thereof.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "8".

NINTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "9", except begs leave to refer all questions of law to the Court and all questions of fact to the trier thereof.

TENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "10", except begs leave to refer all questions of law to the Court and all questions of fact to the trier thereof.

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "11", except begs leave to refer all questions of law to the Court and all questions of fact to the trier thereof.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs

of the Verified Complaint designated "12", except begs leave to refer all questions of law to the Court and all questions of fact to the trier thereof.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the Verified Complaint designated "13", except begs leave to refer all questions of law to the Court and all questions of fact to the trier thereof.

FOURTEENTH: Denies the allegations contained in the paragraphs of the Verified Complaint designated "14".

FIFTEENTH: Denies the allegations contained in the paragraphs of the Verified Complaint designated "15".

SIXTEENTH: Denies the allegations contained in the paragraphs of the Verified Complaint designated "16".

**AS TO THE SECOND CAUSE OF ACTION**

SEVENTEENTH: Answering defendant repeats, reiterates and realleges each and every admission or denial made in response to paragraphs "1" through "16" with the same force and effect as

though fully set forth herein in response to paragraph "17" of the Verified Complaint.

EIGHTEENTH: Denies the allegations contained in the paragraphs of the Verified Complaint designated "18".

NINETEENTH: Denies the allegations contained in the paragraphs of the Verified Complaint designated "19".

**AS TO THE THIRD CAUSE OF ACTION**

TWENTIETH: Answering defendant repeats, reiterates and realleges each and every admission or denial made in response to paragraphs "1 through 19" with the same force and effect as though fully set forth herein in response to paragraph "20" of the Verified Complaint.

TWENTY-FIRST: Denies the allegations contained in the paragraphs of the Verified Complaint designated "21".

TWENTY-SECOND: Denies the allegations contained in the paragraphs of the Verified Complaint designated "22".

**AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRATIVE**

**DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

TWENTY-THIRD: That the damages allegedly suffered by the plaintiff were caused in whole or in part by the culpable conduct of the plaintiff himself. The plaintiff's claim is therefore barred or diminished in the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the damages.

**AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

TWENTY-FOURTH: Plaintiff assumed the risk for injury and/or damages and/or loss of the property, if any, expressly or impliedly, as alleged in the Verified Complaint.

**AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

TWENTY-FIFTH: In the event plaintiff recovers a verdict or judgment against this defendant, then said verdict or judgment must be reduced pursuant to CPLR §4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiff in whole or in part, for any past or future claimed economic loss from any collateral source such as insurance, social security, Workers' Compensation or employee benefit programs.

**AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

TWENTY-SIXTH: The negligent acts or omissions, if any, set forth in plaintiff's Verified Complaint were committed by third parties over which this answering defendant had no control and is not responsible for as a matter of law.

**AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

TWENTY-SEVENTH: That the liability or equitable share of the damages, if any, of the answering defendant to the plaintiff is limited in accordance with the provisions of Article 16 of the CPLR.

**AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

TWENTY-EIGHTH: The plaintiff's action is barred and/or any recovery for any claim of damages herein is accordingly diminished by the recalcitrant worker doctrine.

**AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

TWENTY-NINTH: That the purported causes of action in the plaintiff's Verified Complaint fail to state a cause of action upon which relief can be granted as a matter of law.

**AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

THIRTIETH: That the adjudication of this action may be governed by the laws of a State other than the State of New York.

**AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

THIRTY-FIRST: That the causes of action alleged in the Verified Complaint are barred by the expiration of the applicable statute of limitations.

**AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

THIRTY-SECOND: That defendant objects to the venue of this action as improper under 28 U.S.C. §1391.

**AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

THIRTY-THIRD: That the within Court and venue is an inconvenient forum for the adjudication of this action and it must therefore be dismissed.

**AS AND FOR A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

THIRTY-FOURTH: That the venue of this action must be changed pursuant to 28 U.S.C. §1404.

AS AND FOR A FIRST CROSS-CLAIM AGAINST DEFENDANT  
VERIZON NEW YORK, INC., THIS ANSWERING DEFENDANT  
ALLEGES AS FOLLOWS:

THIRTY-FIFTHH: That if the plaintiff sustained the injuries and damages in the manner and at the time and place alleged, and if it is found that the answering defendant **MASTEC NORTH AMERICA, INC.** is liable to plaintiffs herein, all of which is specifically denied, then said answering defendant, on the basis of apportionment of responsibility for the alleged occurrence, is entitled to contribution from the co-defendant, **VERIZON NEW YORK, INC.**, to pay for all or part of any verdict or judgment that plaintiff may recover against the answering defendant proportionate to the co-defendant's actual negligence.

AS AND FOR A SECOND CROSS-CLAIM AGAINST DEFENDANT  
VERIZON NEW YORK INC., THIS ANSWERING DEFENDANT  
ALLEGES AS FOLLOWS:

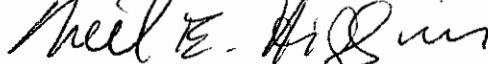
THIRTY-SIXTH: That if the plaintiff sustained the injuries and damages in the manner and at the time and place alleged, and if it is found that the answering defendant **MASTEC NORTH AMERICA, INC.**, is liable to plaintiffs herein, all of which is specifically denied, then said answering defendant, on the basis contractual and common-law indemnification, is entitled to recovery from the co-defendant **VERIZON NEW YORK, INC.** to pay for all or part of any verdict or judgment that plaintiff may recover against the answering defendant.

WHEREFORE, defendant **MASTEC NORTH AMERICA, INC.** demands judgment dismissing plaintiff's Verified Complaint against it and further demands that in the event said answering defendant is found liable to plaintiff herein then said answering defendant, on the basis of apportionment of responsibility and indemnity, have judgment over and against defendant **VERIZON NEW YORK, INC.** for all or part of any verdict or judgment that plaintiff may recover against said answering defendant, together with the costs and disbursements of this action, and for any expenses incurred by it in the defense thereof, including attorneys' fees actually expended.

Dated: New York, New York  
July 14, 2008

JONES HIRSCH CONNORS & BULL P.C.

By:

  
Neil E. Higgins, Esq. (NEH4736)  
Attorneys for Defendant  
**MASTEC NORTH AMERICA, INC.**  
One Battery Park Plaza  
New York, New York 10004  
(212) 527-1000

TO: **GINARTE, O'DWYER, GONZALEZ & WINOGRAD, LLP**  
Attorneys for Plaintiff  
225 Broadway, 13th Floor  
New York, NY 10007  
(212-601-9700)

**VERIZON NEW YORK, INC.**  
1095 Avenue of the Americas  
New York, New York 10036

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
                      )  
                      ) SS.:  
COUNTY OF NEW YORK )

CYNTHIA LOVELACE, being duly sworn, deposes and says:

I am not a party to this action, I am over the age of 18 years and reside in Nassau County, New York.

On July 16<sup>th</sup>, 2008, I served the within:

**VERIFIED ANSWER**

upon:

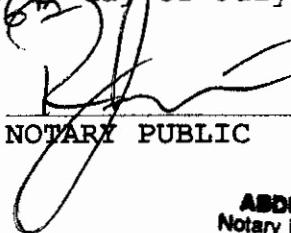
TO: **GINARTE, O'DWYER GONZALEZ  
& WINOGRAD, LLP**  
Attorneys for Plaintiff  
225 Broadway, 13th Floor  
New York, NY 10007  
(212-601-9700)

**VERIZON NEW YORK, INC.**  
1095 Avenue of the Americas  
New York, New York 10036

the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
**CYNTHIA LOVELACE**

Sworn to before me this  
16<sup>th</sup> day of July, 2008.

  
**NOTARY PUBLIC**

**ABDUR-RASHEED JASUR**  
Notary Public, State of New York  
No. 01JA6134663  
Qualified in Suffolk County  
Commission Expires Oct. 3, 2009

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